

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Idolio Monsivias,

Plaintiff(s),

vs.

Cody Peterson et al.,

Defendant(s).

2:22-cv-02116-JAD-MDC

**Order**

Plaintiff previously filed a *Motion to Amend the Complaint*. ECF No. 10. The Court denied the motion without prejudice (ECF No. 11) for failure to attach a complete proposed amended complaint to the motion. Plaintiff filed another *Motion to Amend/Correct the Complaint* (ECF No. 12).

**DISCUSSION**

Pursuant to LR 15-1(a), unless the Court orders otherwise, the moving party must attach the proposed amended pleading to a motion seeking leave of the court to file an amended complaint. An amended complaint must be "complete in itself, including exhibits, without reference to the superseded pleading." *Id.* "[W]hen a plaintiff files an amended complaint, '[t]he amended complaint supersedes the original, the latter being treated thereafter as non-existent.'" *Rhodes v. Plaintiff*, 621 F.3d 1002, 1005 (9th Cir. 2010) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967)). A party may amend its pleading as a matter of course no later than 21 days after serving it. Fed. R. Civ. P. 15(a)(1)(A). "A document filed *pro se* is "to be liberally construed." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (internal citations omitted).

Although the Plaintiff states in his *Motion to Amend/Correct Complaint* (ECF No. 12) that he "propose[s] to dismiss the case," the Court liberally construes Plaintiff to mean he wishes to correct the Defendants' names. Although the attached proposed amended complaint on ECF No. 12 is identical to

1 the original complaint (ECF No. 1), Plaintiff does, however, change the Defendants' names<sup>1</sup> Plaintiff  
2 states that the paperwork suggests that there are four defendants when there should only be two. ECF  
3 No. 12. Using the above facts, the Court liberally construes that Plaintiff wishes to amend his complaint  
4 to properly reflect Defendants' names.

5 Because Plaintiff has not served the complaint (ECF No. 1) on Defendants, Plaintiff may amend  
6 his complaint as a matter of course.

7 ACCORDINGLY,

8 IT IS ORDERED that Plaintiff's *Motion to Amend/Correct Complaint* is GRANTED.

9 IT IS FURTHER ORDERED that Plaintiff has until **February 2, 2024** to file his Amended  
10 Complaint, with the corrected parties' names.

11 IT IS FURTHER ORDERED that Plaintiff has until **February 6, 2024** to provide Proof of  
12 Service in accordance with the Courts previous Order (ECF No. 8).

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14 **NOTICE**

15 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
16 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
17 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
18 may determine that an appeal has been waived due to the failure to file objections within the specified  
19 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

20 This circuit has also held that (1) failure to file objections within the specified time and (2)  
21 failure to properly address and brief the objectionable issues waives the right to appeal the District  
22 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d  
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25 <sup>1</sup> It should be noted that Plaintiff incorrectly put Defendant Seamless Gutters' information on the section reserved for plaintiff information on page 10 of the Attachment to ECF No. 12; however, the Court liberally construes the plaintiff to mean that Seamless Gutters is a defendant, using reference from his prior complaint and motion.

1 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

2 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any  
3 change of address. The notification must include proof of service upon each opposing party's attorney,  
4 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may  
5 result in dismissal of the action.

6 DATED this 26th day of January 2024.

7 IT IS SO ORDERED.

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12 Maximiliano D. Couvillier III  
13 United States Magistrate Judge  
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